

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 308.6, *Application for Equalization by Member, Alternate Member, or Hearing Officer*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Government Code section 15606, proposes to adopt amendments to California Code of Regulations, title 18, section (Property Tax Rule) 308.6, *Application for Equalization by Member, Alternate Member, or Hearing Officer*. The proposed amendments to Property Tax Rule 308.6 implement, interpret, and make specific Revenue and Taxation Code (RTC) sections 1612.7 and 1622.6, by clarifying the current conflict of interest provisions applicable to county property tax assessment appeals, including specifying the individuals whose applications must be heard by an alternate assessment appeals board, and by establishing the procedures for a clerk of the local assessment appeals board to refer an assessment appeal application to an alternate assessment appeals board in another county. The proposed amendments also delete a reference to repealed RTC section 1636.5, and clarify that RTC sections 1624.1 and 1624.2 are applicable to the removal of a special assessment appeals board member.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on April 28-30, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board's Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on April 28, 29, or 30, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Property Tax Rule 308.6.

AUTHORITY

Government Code section 15606

REFERENCE

RTC sections 1612.7 and 1622.6

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

The Board has a number of duties in regard to the administration of California's property tax. Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the Board has adopted Property Tax Rules 301 through 326 relative to the local equalization process, which is the process by which a county property tax assessment may be appealed to a local board of equalization or assessment appeals board by filing an application.

The Board adopted Property Tax Rule 308.6, pursuant to Government Code section 15606, in order to implement, interpret, and make specific the Revenue and Taxation Code's conflict of interest provisions applicable to county property tax assessment appeals.

Prior to 2009, RTC section 1612.7 required an application filed by an employee of the office of the clerk of an assessment appeals board in the county in which the individual is employed, on the employee's own behalf or with the intention to represent the employee's spouse, parent, or child in an assessment appeal, to be heard in accordance with RTC section 1622.6.

Prior to 2009, RTC section 1622.6 required an application filed by a member or alternate member of an assessment appeals board in the county in which the member serves, on the member's own behalf or with the intention to represent the member's spouse, parent, or child, to be heard by a special alternate assessment appeals board appointed by the superior court.

In addition, prior to its repeal (discussed below), RTC section 1636.5 required an application filed by an assessment hearing officer in the county in which the officer serves, on the officer's own behalf or with the intention to represent the officer's spouse, parent, or child, to be heard in accordance with RTC section 1622.6.

Assembly Bill No. 824 (Stats. 2009, ch. 477) (AB 824) repealed and reenacted RTC section 1612.7 and amended RTC section 1622.6 in order to:

- Add to and revise the statutory list of persons whose applications must be heard in accordance with the procedures in RTC section 1622.6 regarding hearings by special alternate assessment appeals boards appointed by the superior court;
- Grant clerks discretion to refer an application to an actively serving special alternate assessment appeals board in another California county in lieu of requesting that the superior court appoint a new special alternate assessment appeals board to hear the application in the clerk's county; and

- Specify the jurisdiction of special alternate assessment appeals boards to hear applications referred from other counties.

The August 19, 2009, Senate Floor Analysis of AB 824 explained that the California Association of Clerks and Election Officials (CACEO) sponsored the bill, and that the new procedures for clerks to refer an application to an actively serving special alternate assessment appeals board in another county are intended to “be voluntary for both [the referring and receiving] counties.”

As a result of AB 824, RTC section 1612.7 currently requires applications filed by the following persons, in the counties in which they serve or are employed, on their own behalf or with the intention to represent their spouse, parent, or child, to be heard in accordance with RTC section 1622.6:

- A current member of an assessment appeals board or a current member of a special alternate assessment appeals board;
- A current assessment hearing officer;
- A current employee of the office of the clerk of the county board of equalization or assessment appeals board; and
- A current employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board.

As a result of AB 824, RTC section 1622.6 currently requires that such applications must be heard by a special alternate assessment appeals board either appointed by the superior court or consisting of three qualified special alternate assessment appeals board members in good standing in another California county.

Senate Bill No. 1494 (Stats. 2010, ch. 654) (SB 1494) subsequently repealed RTC section 1636.5 because similar provisions pertaining to hearing officers were added to RTC section 1612.7 by AB 824.

Property Tax Rule 308.6 reflects the conflict of interest provisions applicable to county property tax assessment appeals prior to the statutory changes made by AB 824 and SB 1494.

Furthermore, RTC section 1624.1 currently provides that “No person shall be qualified to be a member of an assessment appeals board who has, within the three years immediately preceding his or her appointment to that board, been an employee of an assessor’s office.” RTC section 1624.2 currently provides that “No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.” RTC section 1625 provides that “Any member of an assessment appeals board may be removed for cause by the board of supervisors.” And, Property Tax Rule 308.6, subdivision (d), currently provides that “Sections 1624.1 and

1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.”

Effect, Objective, and Benefits of the Proposed Amendments

Board staff in the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to amend Property Tax Rule 308.6 to reflect the changes to RTC sections 1612.7 and 1622.6 made by AB 824, delete the reference in the rule to section 1636.5, which was repealed by SB 1494, and incorporate the provision regarding removal in the second sentence of RTC section 1624.2. Interested parties were provided with staff’s proposed draft language for the amendments to the rule on August 28, 2012 (Letter To Assessors 2012/036), and invited to participate in the rulemaking effort.

The draft amendments provided in Letter To Assessors 2012/036 suggested that an application “may only be referred to a county if there is an agreement for the referral between the two counties.” The Tulare County Counsel’s Office raised concerns that staff’s suggested language may be interpreted as requiring a formal contract signed by each county’s board of supervisors. Therefore, the Tulare County Counsel’s Office suggested replacing staff’s suggested language with the following: “Applications may only be referred to a county if that county’s assessment appeals board has consented to accept the referral.”

Staff agreed with the comment and incorporated the Tulare County Counsel’s Office’s proposed language into the second draft of staff’s proposed amendments to Property Tax Rule 308.6, which was provided to interested parties in Formal Issue Paper 13-001. In addition, staff determined that a violation of RTC section 1624.1 would provide cause for the removal of a special assessment appeals board member under RTC section 1625. Therefore, the second draft of staff’s proposed amendments to Property Tax Rule 308.6 provided that both RTC sections 1624.1 and 1624.2 are applicable to the “removal” of a special assessment appeals board member, rather than incorporating the provision regarding removal in the second sentence of RTC section 1624.2.

CACEO raised a concern regarding the revised language providing that “Applications may only be referred to a county if that county’s assessment appeals board has consented to accept the referral” in a letter dated March 6, 2013. The letter explained that CACEO’s intent in sponsoring AB 824 was to establish a procedure for referring applications under which “the only action or ‘agreement’ . . . was the ‘agreement’ between the two clerks involved” and recommended that staff’s proposed amendments be revised to read as follows: “Applications may only be referred to a county if that county’s clerk of the assessment appeals board has consented to accept the referral.”

Staff subsequently accepted CACEO’s recommended revision and a third draft of the proposed amendments to the rule, which incorporated CACEO’s recommended revision, was sent to interested parties on September 29, 2014 (Letter To Assessors 2014/047). No interested parties raised any further concerns regarding the third draft. Therefore, Board staff prepared Formal Issue Paper 14-010, which recommended that the Board propose the adoption of staff’s third draft of the amendments to Property Tax Rule 308.6, and

submitted it to the Board for consideration at its January 21, 2015, Property Tax Committee meeting.

During its January 21, 2015, Property Tax Committee meeting, the Board determined that staff's recommended amendments were reasonably necessary to have the effect and accomplish the objective of making Property Tax Rule 308.6 consistent with the provisions of RTC sections 1612.7 and 1622.6, as modified by AB 824, deleting the reference to RTC section 1636.5, which was repealed by SB 1494, and clarifying that RTC sections 1624.1 and 1624.2 are applicable to the removal of a special assessment appeals board member. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The Board anticipates that the proposed amendments to Property Tax Rule 308.6 will promote fairness, increase openness and transparency in government, and benefit members of assessment appeals boards and special alternate assessment appeals boards, assessment hearing officers, employees of the offices of the clerks of the boards of equalization and assessment appeals boards, the clerks themselves, employees of the county counsels, and the general public by providing more clarity as to the application of RTC sections 1612.7, 1622.6, 1624.1, and 1624.2.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 308.6 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that implement the RTC's conflict of interest provisions applicable to county property tax assessment appeals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Property Tax Rule 308.6 or the proposed amendments to Property Tax Rule 308.6.

NO MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will result in no direct or indirect cost or savings to any state agency, cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Property Tax Rule 308.6 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1533.2 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Property Tax Rule 308.6 will not affect the benefits of Property Tax Rule 308.6 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Property Tax Rule 308.6 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 9:30 a.m. on April 28, 2015, or as soon thereafter as the Board begins the public hearing regarding the proposed amendments to Property Tax Rule 308.6 during the April 28-30, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Property Tax Rule 308.6. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underline and strikeout version of the text of Property Tax Rule 308.6 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's website at www.boe.ca.gov.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Property Tax Rule 308.6 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently

related change is made, the Board will make the full text of the proposed amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Property Tax Rule 308.6, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's website at www.boe.ca.gov.